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The Bank of New York Successor Trustee to
JPMorgan Chase Bank, N.A., as Trustee for the
Structured Asset Mortgage Investments II Trust,
Mortgage Pass-Through Certificates, Series 2005-AR8*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK SUCCESSOR TRUSTEE
TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE STRUCTURED ASSET
MORTGAGE INVESTMENTS II TRUST,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-AR8,

Plaintiff,

vs.

DESERT SHORES COMMUNITY ASSOCIATION;
PREMIER ONE HOLDINGS INC.; AND NEVADA
ASSOCIATION SERVICES, INC.

Defendants.

Case No.: 2:16-cv-01564-JCM-PAL

**STIPULATION TO EXTEND TIME
TO RESPOND TO DESERT SHORE'S
COMMUNITY ASSOCIATION'S
MOTION TO DISMISS [ECF NO. 11]**

[First Request]

Plaintiff the Bank of New York Mellon fka The Bank of New York Successor Trustee to
JPMorgan Chase Bank, N.A., as Trustee for the Structured Asset Mortgage Investments II Trust
Mortgage Pass-Through Certificates Series 2005-AR8 (**BNYM**) and Defendant Desert Shores
Community Association (**Desert Shores**) stipulate and agree to extend the time for BYNM to
respond to Desert Shores' motion to dismiss BNYM complaint [ECF NO. 11] filed December 30,
2016 to February 3, 2017. No hearing has been set for Desert Shores' motion to dismiss [ECF NO.
11].

BNYM's response was due on January 10, 2017. Pursuant to LR IA 6-1 BYNM asserts it was unable to file the motion or stipulation by the deadline due to excusable neglect. Desert Shores filed two different motions to dismiss ECF Nos. 11 and ECF no. 13. BYNM filed its response to ECF No. 13 on January 6, 2017 not realizing a second motion to dismiss was pending due a calendaring error caused by the two similarly titled motions. The Ninth Circuit has held that excusable neglect encompasses situations in which the failure to comply with a filing deadline is attributable to negligence. *Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9th Cir.2009). There are at least four factors in determining whether neglect is excusable: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir.2000) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). The determination of whether neglect is excusable is ultimately an equitable one, taking account of all relevant circumstances surrounding the party's omission. *Pioneer*, 507 U.S. at 395. This equitable determination is left to the discretion of the district court. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir.2004).

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Here, all four *Pioneer* factors weight in favor of BNYM. First, Desert Shores will not be prejudiced by the delay in the filing of the response. Second, the length of the delay was merely two days, and does not impact the proceedings. Third, while a calendaring error is a weak justification for an attorney's delay, the Ninth Circuit has previously found this type of mistake to be excusable neglect. *See Pincay*, 389 F.3d at 860. Finally, there is no indication that BNYM failure to file the response was the result of bad faith.

DATED: January 12, 2017.

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2005-AR8*

*Attorneys for Desert Shores Community
Association*

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE

DATED: January 13, 2017

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